

STATE'S MOTION TO CONSOLIDATE OFFENSES

Rule 13 – Offenses may be joined under Rule 13 when they are of same or similar character, when evidence of one offense would be admissible at the trial for the other offense, and when consolidation would serve the purposes of judicial economy.

The State of Arizona, by and through undersigned counsel, pursuant to Rule 13.3, Arizona Rules of Criminal Procedure, moves this Court to consolidate the above-entitled cause for trial with CR 96-05829. This motion is made because the offenses charged in the two cause numbers are of the same or similar character. In addition, the evidence in each case is admissible in the other for purposes of proving intent, plan, knowledge, and identity, as explained in the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS:

A. CR96-04108

The defendant is charged with Aggravated Driving or Actual Physical Control while Under the Influence of Intoxicating Liquor or Drugs, a class 4 felony. The State has alleged two prior DUI convictions for which the offense dates were within sixty months of both of these offenses. One prior conviction concerned a violation of A.R.S. § 28-692 that occurred on January 19, 1995. In that case, the defendant was convicted on or about August 25, 1995, in the Phoenix City Court, in case number 48540751. The other prior conviction concerned a violation of A.R.S. § 28-692 that occurred December 17, 1994. In that case, the defendant was convicted on or about September 21, 1995 in the Scottsdale Justice Court, in case number TR94-01223.

B. CR96-05829

Defendant is charged with Aggravated Driving or Actual Physical Control while Under the Influence of Intoxicating Liquor or Drugs, a class 4 felony, while his driver's

license was suspended, canceled, revoked or refused, or restricted as a result of violating A.R.S. § 28-692 or § 28-694.

Both of the charges stem from the same Phoenix Police Departmental Report, 60-154823.

ARGUMENT:

The Rules of Criminal Procedure provide for joinder of offenses as follows:

a. Offenses. Provided that each is stated in a separate count, 2 or more offenses may be joined in an indictment, information, or complaint, if they:

(1) Are of the same or similar character; or

(2) Are based on the same conduct or are otherwise connected together in their commission; or

(3) Are alleged to have been a part of a common scheme or plan.

c. Consolidation. If such offenses . . . are charged in separate proceedings, they may be joined in whole or in part by the court or upon motion of either party, provided that the ends of justice will not be defeated thereby.

Rule 13.3, Arizona Rules of Criminal Procedure.

A. Consolidation is proper when evidence relating to one charge is admissible as to the other charges.

Consolidation is proper when the evidence relating to one set of charges would be admissible in a separate trial on another set of charges. *State v. Befford*, 157 Ariz. 37, 40, 754 P.2d 1141, 1144 (1988). Under Rule 404(b), Ariz. R. Evid., evidence of other crimes, wrongs, or acts is admissible for any relevant purpose including to prove motive, intent, preparation, plan, knowledge, identity, absence of mistake, or to complete the story of the crimes. *State v. Mincey*, 141 Ariz. 425, 433, 687 P.2d 1180 (1984), *cert. denied*, 469 U.S. 1040 (1984); *State v. Stein*, 153 Ariz. 235, 239, 735 P.2d 845, 849 (App. 1987); *State v.*

Hanson, 138 Ariz. 296, 302, 684 P.2d 850, 856 (App. 1983). When evidence of the other crimes could have been admitted at a separate trial, the defendant would be no more prejudiced by the joinder of the offenses than if they had been tried separately.

In the event that these matters were to be tried separately, in the trial for each offense, CR 96-04108 and CR 96-05829, the State would have to call two officers, a detective, the Custodians of Record from Scottsdale and Phoenix, the Custodian of Records from the Department of Motor Vehicles, and Linda Nokes. Each witness would testify to the same information in each trial. Since the evidence of each witness would be admissible in each trial separately, the trials should be consolidated.

B. Consolidation is proper to promote judicial economy.

Any prejudice that the defendant claims he will suffer if these cases are consolidated for trial must be balanced against the countervailing consideration of judicial economy. *State v. Mauro*, 149 Ariz. 24, 27, 716 P.2d 393, 396 (1986), *reversed on other grounds*, 481 U.S. 520 (1987); *State v. Via*, 146 Ariz. 108, 115, 704 P.2d 238, 245 (1985). A defendant cannot resist consolidation simply on the ground that proof of guilt on one charge will make the trier of fact more likely to find guilt on the other charge. *Anderson v. State*, 155 Ariz. 289, 290, 746 P.2d 30, 31 (App. 1987). There is no prejudice when the jurors are instructed to consider each offense separately and the State has to prove guilt of each offense beyond a reasonable doubt. *State v. Comer*, 165 Ariz. 413, 799 P.2d 333, 339 (1990); *State v. Martinez-Villareal*, 145 Ariz. 441, 446, 702 P.2d 670, 675 (1985), *cert. denied*, 474 U.S. 975 (1985).

As can be seen from the foregoing arguments, it is abundantly clear that the two trials presently set will require the exact same rendition of evidence and will achieve nothing more than duplicating the expenditure of both time and money.

In the present case, consolidation of the charges against the defendant is appropriate pursuant to Rule 13.3(c), Arizona Rules of Criminal Procedure. The crimes are of the same or similar character and are part of a common scheme or plan. Evidence of the crimes in the one case would be admissible in a trial on the crimes in the other cases pursuant to Rule 404(b), Arizona Rules of Evidence. The considerations of judicial economy also support consolidation. For all of the above reasons, this Court should consolidate the charges against the defendant for trial.